

APPENDIX A. NOTICE TO APPEAR FOR FINAL PRE-TRIAL CONFERENCE

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF THE SUPERIOR COURT

CIVIL DOCKET#

RE: NOTICE TO APPEAR FOR FINAL PRE-TRIAL CONFERENCE

A final pre-trial conference in the above referenced case will be held on _____ in _____ at _____. All trial counsel are required to attend and submit their joint pre-trial memorandum to the Court no less than three business days prior to the pre-trial conference.

In accordance with Standing Order 1-88, the time standards tracking order, and in order to facilitate orderly and efficient progress towards trial, counsel for all parties shall meet for the purpose of preparing a joint pre-trial memorandum. Unless all counsel agree otherwise, counsel for the plaintiff shall be responsible for preparing and circulating the first draft of the memorandum which shall contain the following component parts:

- (1) Any stipulations of agreed facts in a form suitable to be submitted as an exhibit at trial or read to the jury;
- (2) A brief statement by each party of what that party expects the evidence to show;
- (3) An agreed suggested description of the case to be read to the jury during empanelment, which shall bring to the attention of potential jurors any facts that may affect the ability of a juror to render a fair and impartial verdict;
- (4) A statement of all significant legal issues that the Court may need to resolve either before or during trial (including, particularly, any significant evidentiary issues), the positions of the parties on these issues, and a statement of authorities. Provide a copy of all cases and other authorities relied upon other than reported Supreme Judicial Court and Appeals Court cases.
- (5) The name and address of each witness to be called by each party. Failure to list a witness in the pre-trial memorandum may lead to an order precluding the testimony of that witness unless the need for the witness cannot reasonably be anticipated prior to trial or other good cause is shown. No party may reserve the right to add a witness without leave of the Court at the pre-trial conference. In addition, the parties shall identify any witness or party who needs an interpreter, as well as the language the interpreter needs to speak.
- (6) (a) The name, address and qualifications of each expert witness the parties intend to call, together with the subject matter on which the expert is expected to testify, the substance of all facts and opinions to which the expert is expected to testify

and a detailed summary of the grounds of each expert's opinion. If an expert witness's identity and expected testimony has previously been disclosed in response to expert interrogatories, this item may be satisfied by appending to the pre-trial memorandum a copy of the expert interrogatory responses. Otherwise, the substance of the expert opinion shall be contained within the pre-trial memorandum and shall be as detailed as would be expected in an answer to an expert interrogatory.

(b) Unless earlier resolved, whether any party moves to conduct any expert deposition under Mass. R. Civ. P. 26(b)(4). If so, unless the parties all agree to the expert deposition, a written motion to conduct the expert deposition and opposition shall be appended to the pre-trial memorandum so that the motion may be decided by the judge at the pre-trial conference.

(c) Whether any party intends to serve any *Daubert-Lanigan* motion challenging the admissibility of expert testimony and, if so, when the party intends to serve and file such a motion and the anticipated basis for such a motion. Failure to inform the court in the pre-trial memorandum of a party's intent to file a *Daubert-Lanigan* motion may, in the discretion of the court, constitute a waiver of the motion. If the date proposed for the filing of a *Daubert-Lanigan* motion is deemed by the court to be too close to trial, the court may set an earlier deadline for the filing of the *Daubert-Lanigan* motion. At the pre-trial conference, the court will set a date for hearing on any *Daubert-Lanigan* motion.

NOTE: Inclusion of an expert witness's identity and expected testimony in the joint pre-trial memorandum does not waive any party's right to object to that expert's testimony on the ground that responses to expert discovery were untimely or inadequate.

- (7) Estimated length of trial.
- (8) An itemization of the special or liquidated damages alleged.
- (9) A certification that counsel for all parties have conferred and discussed the possibility of settlement, and the amenability of the case to mediation or other forms of alternate dispute resolution. If alternative dispute resolution has commenced or will commence, the parties shall inform the Court of its status. The parties shall not disclose the contents of settlement demands or offers in the pre-trial memorandum.

The joint pre-trial memorandum shall be submitted jointly. All lead counsel at trial are expected to attend the final pre-trial conference.

No later than five business days prior to the scheduled trial, counsel shall meet and review the exhibits proposed to be introduced by each party and all materials to be shown to the jury. Based on that meeting and review of exhibits, counsel shall prepare a joint exhibit list

identifying 1) those exhibits that all parties agree are admissible into evidence and 2) proposed exhibits of each party as to which there is no agreement on admissibility. The exhibit list is to be presented to the trial judge at the commencement of trial with a copy for the court reporter. The Court will determine whether the agreed-upon exhibits shall be pre-marked and introduced at the commencement of trial.

In the event deposition transcripts are to be offered at trial, and there are objections to any of the answers set forth in the transcript, the parties, not less than three days prior to the commencement of trial, are to supply to the court a transcript of the testimony with objections highlighted and, in the margin, a brief statement of the grounds of the objection and the response by the proponent of the testimony. Videotaped depositions are governed by Mass. R. Civ. P. 30A.

By the Court (, J.)

Dated:

Clerk of the Courts